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No. 80-2195

In the Supreme Court of the United States

OCTOBER TERM, 1981

UNITED STATES OF AMERICA,

Petitioner

v.

LEARLEY REED GOODWIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

PAUL W. SPENCE
Assistant Federal Public Defender
Suite 1012
2 Hopkins Plaza
Baltimore, Maryland 21201
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PETITION FOR CERTIORARI FILED JUNE 26, 1981
CERTIORARI GRANTED NOVEMBER 30, 1981

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[DOCKET ENTRIES
BEFORE UNITED STATES MAGISTRATE]

DATE	PROCEEDINGS
1979	
2-2-76	Defendant charged with: (1) Fail to stop at Scene of Accident (2 (2) Speed 60/50 (3) Flee to Elude Police (4) Fail to give information and render aid (5) Assault by Striking, Beating or Wounding (7) Reckless Driving
2-3-76	Warrant Issued and Complaint Signed this date.
3-11-76	Defendant arrested by Officer Higgins, U.S. Court Bond Hearing before Magistrate Burgess, Defendant released on Personal Recognizance for 3-30-76. Attorney appeared George Gates, 1108 16th Street, N.W., Washington, D.C. 296-3824. Defendant attorney appeared and waived the 20 days rule for Preliminary on record.
3-30-76	Defendant and Attorney appeared. Preliminary Hearing Held. Probable Cause found. Trial set before Mag. Burgess for 4-29-76. Bond-[j]ump Charge Added.
4-20-76	Sent defendant summons for 4-29-7[6] trial date by Certified Mail. Return receipt was received in this office indicating that the summons sent has been received by Mr. Goodwin.
4-29-7[6]	Defendant did not appear. Warrant Issued $10,000 Cash Only.
5-16-79	Received call from the U.S. Marshals office that Mr. Goodwin was in the Alexandria Detention Center in Alexandria, Virginia on Virginia charges. Made arrangements for Mr. Goodwin to be transported to the U.S. District Court—Hyattsville for trial on 5-24-79. Appointed Eugene Zoglio, Suite 200, Executive Building, College Park, Maryland 779-8808 to represent defendant in Hyattsville.

DATE	PROCEEDINGS
5-24-79	Defendant transported to Court—Hyattsville. Attorney appeared. Attorney and Defendant appeared before Magistrate Burgess and requested a Jury Trial. Eugene Zoglio, Esq. does not wish to represent the defendant in trial in Baltimore.
	* * * Defendant does have Jail time to serve in California. The U.S. Marshals will transport the defendant to California when Jury Trial is completed. Defendant to be transported to California Training Facility, Soldad, California. * * *
5-31-79	All paperwork forwarded to Clerk, Baltimore, Maryland. Def. now in custody in Baltimore City Jail.

[DOCKET ENTRIES
BEFORE UNITED STATES DISTRICE COURT]

DATE		PROCEEDINGS
1979		
July 3	(1)	Indictment for violation of U.S.C., Title 18, Sections 111 & 1114; U.S.C., Title 18, Section 113(c); U.S.C., Title 18, Sections 7 & 13, Ann. Code of Md., Art. 66½, Sect. 11-904; U.S.C. Title 18, Section 3150—(Forcibly Assaulting a Federal Officer; Assault within the Maritime and Territorial Jurisdiction; Fleeing to Elude a Police Officer and Failure to Appear)
" "	(2)	Original Papers of U.S. Magistrate Burgess.
" 6	(3)	Order (Burgess, U.S. Magis.) dated March 11, 1976, releasing defendant on his personal recognizance as therein set forth.
" "	(4)	Order (Burgess, U.S. Magis.) appointing U.S. Public defender to represent defendant dated May 24, 1979.
" "	(5)	Appearance of Paul W. Spence, AFPD, as counsel for defendant.
" "	—	Defendant arraigned and plead "Not Guilty" as to all counts before Rosenberg, U.S. Magis.).
" "	(6)	Order (Rosenberg, U.S. Magis.) that defendant execute a bond in the amount of five thousand dollars ($5,000.00), as therein set forth.
" 20	(7)	Motion and Order (Murray, J.) extending the time for filing pre-trial motions from July 21, 1979 to July 30, 1979. (c/m 7/23/79 mdf)

DATE		PROCEEDINGS
1979		
" 30	(8)	Motion of Defendant for Severance, Memorandum and Request for Hearing. (2 c/s 7-30-79)
August 14	(9)	Response of United States to motion of defendant for Severance. (1 c/s 8/14/79)
" 16	(10)	Notice of defendant of Alibi. (2 c/s 8/16/79)
" 31	(11)	Petition of defendant for issuance of subpoenas at the expense of the United States Government and Order (Kaufman, J.) that Petition be granted as prayed, and three (3) subpoenas issued.
Sept. 5	(12)	Order (Murray, J.) that Count Four is severed from Counts One, Two and Three of the Indictment for purposes of trial (c/s 9/5/79 cwc)
Sept. 11	(13)	Appearance of John H. Morris, AFPD, as co-counsel on behalf of defendant.
" "	(14)	Motion of defendant in Limine, Memorandum and Request for Hearing. (2 c/s 9-11-79)
" "	—	Hearing on Motion in Limine of defendant—Oral Opinion rendered by the Court, Murray, J.
" "	(15)	Order (Murray, J.) that Motion in Limine of defendant is "GRANTED" in part and "DENIED" in part. (See Paper No. 14)
" "	(16)	Requested Questions (11) of United States on Voir Dire.

DATE			PROCEEDINGS
1979			
"	"	(17)	Requested Questions (20) of defendant on Voir Dire.
"	"	(18)	Requested Jury Instructions (14) of United States.
"	"	(19)	Requested Jury Instructions (18) of defendant.
"	"	—	Jury sworn and examined on Voir Dire.
"	"	—	Jury empannelled and sworn before (Murray, J.) as to Counts 1, 2 and 3 ONLY.
"	"	(20)	Motion of defendant for Judgment of Acquittal on Counts (1) and (2) of the Indictment and Memorandum in Support thereof. (c/s)
"	"	(21)	Motion of defendant for Judgment of Acquittal on Count (3) of the Indictment, Exhibit A and B and Memorandum. (c/s)
"	"	(22)	SECOND Motion of defendant for Judgment of Acquittal on Count (3) of the Indictment and Memorandum. (c/s)
"	"	—	Hearing on Motion of defendant for Judgment of Acquittal on Counts 1, 2 and 3 of the Indictment filed at conclusion of Governments case-in-chief-decision to be rendered tomorrow.
"	"	—	Not Concluded.
Sept.	12	—	Trial continued.
"	"	(23)	Response of United States to Motion of defendant for Judgment of Acquittal on Count III. (c/s)

DATE			PROCEEDINGS
1979			
"	"	(24)	Supplemental Requested Jury Instructions (14) of defendant.
"	"	—	Oral Opinion rendered by the Court "DENYING" Motions of defendant for Judgment of Acquittal on Counts 1, 2 and 3 of the Indictment, filed at conclusion of Government's case-in-chief.
"	"	(25)	Order (Murray, J.) that Motion of defendant for Judgment of Acquittal on Counts (1) and (2) of the Indictment is "DENIED." (See Paper No. 20)
"	"	(26)	Order (Murray, J.) that Motion of defendant for Judgment of Acquittal on Count (3) of the Indictment is "DENIED." (See Paper No. 21)
"	"	(27)	Order (Murray, J.) that SECOND Motion of defendant for Judgment of Acquittal on Count (3) of the Indictment is "DENIED." (See Paper No. 22)
"	"	—	Argument of Counsel.
"	"	—	Court's Charge to the Jury.
"	"	—	Bailiff sworn (Charles Groce)
"	"	—	*VERDICT*: "GUILTY" as to Counts 1 and 3 and "NOT GUILTY" as to Count 2.
"	"	—	Imposition of sentence suspended as to Counts 1 and 3 pending pre-sentence report.
"	"	—	Conditions of release set by Magis. Rosenberg are hereby "MAINTAINED.

DATE		PROCEEDINGS
1979		
" 19	(28)	Motion of defendant to Dismiss Count One, or for Alternative Relief and Memorandum. (2 c/s 9-20-79)
Oct. 9	(29)	Motion of United States for Extension of Time to Motion of defendant to Dismiss Count One or for Alternative Relief. (c/s 10-9-79)
Oct. 10	(30)	Order (Murray, J.) EXTENDING time until October 15, 1979 for United States to respond to Motion of defendant to Dismiss Count One or for Alternative Relief. (c/m 10-10-79—ak)
" 23	(31)	Memorandum of United States in response to motion of defendant to dismiss count one of the Indictment and Affidavit. (c/s 10/23/79)
Nov. 1	(32)	Reply of defendant to Memorandum of United States in response to motion of defendant to dismiss count one of the Indictment, Exhibit A and Request for Hearing. (c/s 11/1/79)
" 7	—	Hearing on motion of defendant to dismiss count one of the Indictment.
" "	—	Oral Opinion rendered "DENYING" motion of defendant to dismiss count one of the Indictment—AUSA to submit order.
" 9	(33)	Order (Murray, J.), "DENYING" motion of defendant to dismiss count one of the Indictment, as therein set forth. (c/m 11/13/79 par)
Dec. 12	(34)	JUDGMENT: The defendant is hereby committed to the custody of the Attorney General or his authorized rep-

DATE		PROCEEDINGS
1979		
		resentative for imprisonment for a period of five (5) years as to Count No. 1 and for a period of one (1) year as to Count No. 3. Said terms of imprisonment to run consecutively, making a total term of imprisonment of six (6) years. Terms of imprisonment imposed as to each of Counts Nos. 1 and 3 are to run consecutively, to any sentence imposed by any other Court. Upon a Jury Verdict of "Not Guilty" as to Count No. 2, a Judgment of Acquittal was entered by the Court, as to said count. Upon Order of the Court, Count No. 4 of the Indictment was severed for purposes of trial, Order Murray, J.) dated November 26, 1979.
Dec. 12	(35)	Notice of Appeal of Defendant (c/m 12/26/79) (Received 11/26/79).
" "	(36)	Order (Murray, J.) "Directing" the Official Court Reporter to prepare transcript of proceedings, as there in more particularly set forth.
1980		
Jan. 31	(37)	Motion and Order (Murray, J.) that the U.S. Marshal transport the defendant to the Bacon Funeral Home, to view his mother's remains, and to be returned to Baltimore, City Jail. (c/s 1/31/80 j.b.)
Mar. 4	(38)	Order of United States Attorney, dismissing Count 4 of the Indictment as to Defendant and leave of Court (Murray, J.) thereon.

DATE		PROCEEDINGS
" 31	(39)	Transcripts of Proceedings before the Court (Murray, J.) taken on September 11 & 12, 1979 and November 7 & 26, 1979. (FOUR VOLUMES).
Apr. 1	(40)	Exhibit list.
" "	—	Record on Appeal transmitted to Clerk, U.S. Court of Appeals, for the Fourth Circuit, Richmond, Virginia (Volume I through VI).

[CRIMINAL COMPLAINT]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Magistrate's Docket No. 3/76

Case No. 100M

UNITED STATES OF AMERICA

v.

LEARLEY REED GOODWIN

COMPLAINT FOR VIOLATION OF

U.S.C. Title 18 36 CFR 50.31 (2 counts)
50.32

Section 7(3), 13 113D

Md. Art. 66½, Sec. 11-904, 10-102, 10-104

BEFORE GEORGE E. BURGESS, Hyattsville, Maryland

The undersigned complainant being duly sworn states:

That on or about February 2, 1976, at 1854 hours at S/B Baltimore-Washington Parkway at Maryland Route #450, an area within the special territorial jurisdiction of the United States in the District of Maryland LEARLEY REED GOODWIN did unlawfully operate a motor vehicle, to wit: brown Buick bearing D.C. registration D-1802 in excess of the posted speed limit 60 in a 50, did unlawfully assault Officer Morrissette by striking, beating or wounding with said vehicle, did unlawfully fail to give aid, information and I.D. at the scene of a personal injury accident, did unlawfully flee to elude a Police Officer, did unlawfully operate said vehicle in a reckless manner, and did unlawfully exceed the posted speed limit, to wit: 95+ in a 45 zone.

And the complainant states that this complaint is based on investigation and observation of Officer Morrissette, United States Park Police.

See attached reports referenced hereto made a part hereof.

And the complaint further states that he believes that

are material witnesses in relation to this charge.

/s/ James G. Morrissette
Officer
United States Park Police

Sworn to before me, and subscribed in my presence, February 3, 1976.

/s/ George Burgess
United States Magistrate

[INDICTMENT]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM-79-0298

(Forcibly Assaulting a Federal Officer, 18 U.S.C. §§ 111 and 1114; Assault Within the Maritime and Territorial Jurisdiction, 18 U.S.C. § 113(c); Fleeing to Elude a Police Officer, 18 U.S.C. §§ 7, 13 and Annotated Code of Maryland, Article 66½ § 11-904, (Transportation Article § 21-904); Failure to Appear, 18 U.S.C. § 3150

UNITED STATES OF AMERICA

v.

LEARLEY REED GOODWIN

INDICTMENT

The Grand Jury for the District of Maryland charges that:

1. On or about February 2, 1976, in the State and District of Maryland,

LEARLEY REED GOODWIN

did willfully and forcibly assault, resist, oppose, impede, intimidate and interfere with James Morrissette, an officer of the United States Park Police, National Park Service, United States Department of the Interior, while the said officer was engaged in the performance of his official duties.

2. On or about February 2, 1976, in the State and District of Maryland,

LEARLEY REED GOODWIN

did use a deadly and dangerous weapon, that is, an automobile, in the commission of the offense charged in paragraph one of this count.

18 U.S.C. §§ 111 and 1114

COUNT II

And the Grand Jury for the District of Maryland further charges that:

On or about February 2, 1976, on the Baltimore-Washington Parkway, within the special territorial jurisdiction of the United States,

LEARLEY REED GOODWIN

did assault James Morrissette with a dangerous weapon, that is an automobile, without just cause or excuse and with intent to do bodily harm to James Morrissette.

18 U.S.C. § 113(c)

COUNT III

And the Grand Jury for the District of Maryland further charges that:

On or about February 2, 1976, on the Baltimore-Washington Parkway, within the special territorial jurisdiction of the United States,

LEARLEY REED GOODWIN

did, by willfully failing to stop his vehicle, and by other means, attempt to elude James Morrissette, an officer of the United States Park Police, National Park Service, United States Department of the Interior, who was then in a vehicle appropriately marked as an official police vehicle and who gave LEARLEY REED GOODWIN a visual and audible signal to stop his vehicle.

18 U.S.C. §§ 7 and 13

Annotated Code of Maryland Article 66½, § 11-904 (Transportation Article § 21-904)

COUNT IV

And the Grand Jury for the District of Maryland further charges that:

On or about April 29, 1976, in the State and District of Maryland,

LEARLEY REED GOODWIN

having been previously charged in a complaint with (1) unlawfully assaulting officer James Morrissette by striking, beating or wounding with a vehicle in violation of 18 U.S.C. § 113(d), a misdemeanor; (2) unlawfully failing to give aid, information and identification at the scene of a personal injury accident in violation of 18 U.S.C. §§ 7 and 13 and Annotated Code of Maryland, Article 66½ §§ 10-102 and 10-104 (Transportation Article, §§ 20-102 and 20-104), petty offenses; (3) unlawfully fleeing to elude a police officer in violation of 18 U.S.C. §§ 7 and 13 and Annotated Code of Maryland, §§ 11-904 (Transportation Article 21-904), a misdemeanor; (4) unlawfully operating a vehicle in a reckless manner in violation of 36 CFR § 50.32, a petty offense; (5) and unlawfully exceeding the posted speed limits in violation of 36 CFR § 50.31 (two counts), petty offenses, having been released pursuant to the provisions of the Bail Reform Act of 1966, 18 U.S.C. § 3146(a) for appearance before the Honorable George Burgess, United States Magistrate for the District of Maryland in connection with the said charges, and having been required to appear before the said magistrate on April 29, 1976 for trial on the said charges, knowingly and willfully did unlawfully fail to appear as required before the aforesaid magistrate.

/s/ Russell T. Baker, Jr.
RUSSELL T. BAKER, JR.
United States Attorney

18 U.S.C. § 3150

A TRUE BILL:

Foreman

[MOTION TO DISMISS
COUNT I OF THE INDICTMENT]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM-79-0298

UNITED STATES OF AMERICA

v.

LEARLEY REED GOODWIN

MOTION TO DISMISS COUNT ONE, OR FOR ALTERNATIVE RELIEF

The defendant, Learley Reed Goodwin, by his attorneys, Charles G. Bernstein, Federal Public Defender for the District of Maryland, Paul W. Spence, and John H. Morris, Assistant Federal Public Defenders, respectfully moves this Honorable Court to dismiss Count One of the pending Indictment, or for alternative relief as deemed appropriate, and for reasons states the following:

1. On February 2, 1976, the defendant was cited in violation notices filed in the United States District Court for the District of Maryland, at Hyattsville, with the following offenses: (1) unlawfully failing to give aid, information and identification at the scene of a personal injury accident, in violation of 18 U.S.C. §§ 7 and 13, and Ann. Code of Md., Trans. Art., §§ 20-102, 20-104; (2) assault by striking, beating or wounding, in volation of 18 U.S.C. 113(d); (3) fleeing or eluding a police officer, in violation of 18 U.S.C. §§ 7 and 13, and Ann. Code of Md., Trans. Art., § 21-904; (4) reckless driving, in violation of 36 C.F.R. § 50.32; (5) exceeding the posted speed limits, in violation of 36 C.F.R. § 50.31 (two counts)

2. On February 3, 1976, a Complaint was filed alleging the violations of the aforementioned offenses. On March 30, 1976, the defendant appeared before the Honorable George E. Burgess for a preliminary hearing on the charge of fleeing or eluding. (The remaining charges, as petty offenses, did not entitle the defendant to a preliminary hearing). The Magistrate found probable cause, and trial on the aforementioned charges was scheduled for April 29, 1976, before Magistrate Burgess.

3. Due to the defendant's absence from the jurisdiction, the proceedings were held in abeyance until May 24, 1979. At this time, the defendant was transported to the United States District Court at Hyattsville for trial on the aforementioned complaint, plus a further charge of failure to appear, in violation of 18 U.S.C. § 3150. On said date, the defendant refused to consent to be tried by the United States Magistrate and requested a jury trial. This matter was then transferred to the United States District Court for the District of Maryland, at Baltimore.

4. On July 3, 1979, the United States Attorney for the District of Maryland sought and obtained from the Grand Jury an indictment charging the defendant with fleeing or eluding and failure to appear, as before, as well as the additional charges of assault upon a federal officer, in violation of 18 U.S.C. § 111, and assault with a dangerous weapon within the special territorial jurisdiction of the United States, in violation of 18 U.S.C. § 113(c).

5. On September 12, 1979, a jury found the defendant guilty of assault upon a federal officer (Count One) and acquitted on the charges of assault with a dangerous weapon within the federal jurisdiction (Count Two).

6. The defendant submits that the indictment on the felony charges violated the Due Process Clause of the Fifth Amendment since he is entitled to pursue his statutory right to refuse to consent to be tried before the United States Magistrate, and his constitutional right to

a jury trial, without the apprehension or appearance that the Government will retaliate by proceeding on more serious charges than had been initially contemplated, thus exposing him to a significantly greater period of incarceration. *Blackledge* v. *Perry*, 417 U.S. 21 (1974); *North Carolina* v. *Pearce*, 395 U.S. 711 (1969); *United States* v. *Ruesga-Martinez*, 534 F.2d 1367 (9th Cir. 1976).

In support of the aforegoing Motion, the Court is respectfully referred to the accompanying Memorandum.

WHEREFORE, the defendant respectfully moves this Honorable Court to dismiss Count One of the pending Indictment, and for such other or further relief as may be deemed appropriate.

Respectfully submitted,

/s/ Charles G. Bernstein
CHARLES G. BERNSTEIN,
Federal Public Defender

/s/ Paul W. Spence
PAUL W. SPENCE,
Assistant Federal Public Defender

/s/ John H. Morris
JOHN H. MORRIS,
Assistant Federal Public Defender
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[MEMORANDUM IN SUPPORT OF MOTION TO DISMISS]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM-79-0298

UNITED STATES OF AMERICA

v.

LEARLEY REED GOODWIN

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS, OR FOR ALTERNATIVE RELIEF

In the aforegoing Motion, the defendant seeks the dismissal of Count One of the Indictment on the ground that the increase in the severity of charges, as accomplished by the felony Indictment of July 3, 1979, violated his constitutional right to due process under the Fifth Amendment.

At the outset, it must be noted that the defendant does not assert actual vindictiveness on the part of the Government; however, "the accused need not prove he was an actual victim of retaliation". *United States* v. *Johnson*, 537 F.2d 1170, 1173 (4th Cir. 1976); *see also Blackledge* v. *Perry*, 417 U.S. 21, 28 (1974); *North Carolina* v. *Pearce*, 395 U.S. 711, 725 (1969).

In *North Carolina* v. *Pearce*, *supra*, the Supreme Court held that after the successful challenge of a conviction on appeal, an accused may not be subjected to a harsher sentence upon retrial and reconviction, absent identifiable conduct occurring after the original sentencing proceeding. Noting that imposition of a heavier sentence upon a reconvicted defendant for the express purpose of penalizing the defendant for having successfully challenged his conviction would be a flagrant violation of Fourteenth Amendment due process, the Court stated that "due process. . . requires that a defendant be freed of appre-

hension of such a retaliatory motivation on the part of the sentencing judge." *Id.* at 725.

In *Blackledge* v. *Perry*, *supra*, the *Pearce* rationale was extended to protect the accused against the fear of prosecutorial vindictiveness. In *Blackledge*, the defendant exercised his statutory right to a trial *de novo* following a misdemeanor conviction in the lower court. The prosecutor then obtained a felony indictment based on the identical conduct upon which the misdemeanor charge was brought. Although there was no indication of bad faith or malice on the part of the Government, the Court held the subsequent felony charge constitutionally impermissible:

> A person convicted of an offense is entitled to pursue his statutory right to a trial *de novo*, without apprehension that the State will retaliate by substituting a more serious charge for the original one, thus subjecting him to a significantly increased potential period of incarceration.

Id. at 28. The upshot of *Pearce* and *Blackledge* is that due process mandates a freedom from even the apprehension of retaliation for the exercise of stautory rights. Since this prophylactic rule applies to the exercise of a statutory right that has due process implications, *see, e.g. Blackledge* v. *Perry*, *supra* (right to a trial de novo); *North Carolina* v. *Pearce*, *supra* (right to appeal); and *United States* v. *DeMarco*, 550 F.2d 1224 (9th Cir. 1977) (18 U.S.C. § 3237(b) venue right), it necessarily applies to the exercise of the Sixth Amendment right to a jury trial. *See United States* v. *Andrews*, 444 F. Supp. 1238, 1242 (E.D. Mich. 1978) ("For a Constitutional right it is even more essential to apply the prophylactic rule enunciated in *Blackledge* and *Pearce*").

In the instant matter, the defendant initially appeared before the Honorable George E. Burgess, United States District Court for the District of Maryland, at Hyattsville, on several misdemeanor charges. A preliminary

hearing was held on March 30, 1976, on one of those charges, to wit, fleeing or eluding a police officer. Due to the defendant's absence from the jurisdiction (which gave rise to an additional charge of failure to appear, the proceedings in this case were held in abeyance until May 24, 1979, when the defendant was brought before Magistrate Burgess for trial on the original misdemeanor charges, as well as the alleged failure to appear. At this time, the defendant refused to consent to be tried by the United States Magistrate, and requested a jury trial. Subsequent to the transfer of the case to the United States District Court for the District of Maryland, at Baltimore, the Government sought and obtained a felony indictment charging violations of 18 U.S.C. § 111 (assaulting a federal officer) and 18 U.S.C. § 113(c) (assault within federal jurisdiction), as well as the original misdemeanor charges of fleeing or eluding, and failure to appear.[1] It is clear that the Government could have initially proceeded on the felony charges. Instead, it elected to charge and try the defendant before the United States Magistrate on various misdemeanors, and only proceeded on the felony counts subsequent to the defendant's refusal to consent to be tried before the Magistrate, and request for a jury trial. In a decision similar to the case at bar, *United States* v. *Ruesga-Martinez*, 534 F.2d 1367 (9th Cir. 1976), the court found that "[w]hen the appellant . . . refused to sign the waiver form, the ensuing increase in the severity of the charges against him created a sufficient appearance of vindictiveness to bring the principles of *Pearce* and *Blackledge* into application." *Id.* at 1369. In reversing the conviction and remanding for dismissal of the indictment, the court further stated:

---

[1] The maximum penalty allowable for the various misdemeanors, assuming conviction and consecutive sentences, is four years and two months. However, the defendant is exposed to a potential term of incarceration of fifteen years under the felony counts of the Indictment.

> Therefore, in the present case appellant was entitled to exercise his right to be tried by a District Judge without fear that the prosecutor might retaliate by substituting a more serious charge for the misdemeanor charged in the original complaint.

Id. at 1370. (footnote deleted). *See also United States* v. *Alvarado-Sandoval*, 557 F.2d 645 (9th Cir. 1977); *United States* v. *Andrews*, *supra*; *cf. United States* v. *Sturgill*, 563 F.2d 307 (6th Cir. 1977).

Regardless of the actual motivation of the Government in bringing the felony charges in this case, the appearance of retaliation exists where, as here, those charges follow the defendant's failure to consent to be tried before the United States Magistrate, and request for a jury trial, and there is no indication that the felony charges would have been brought had the case proceeded before the Magistrate. The aforegoing principles of law demonstrate that the mere apprehension of vindictiveness, combined with a significantly increased potential period of incarceration, suffices to deprive the accused of due process of law under the Fifth Amendment.

Respectfully submitted,

/s/ Charles G. Bernstein
CHARLES G. BERNSTEIN,
Federal Public Defender

/s/ Paul W. Spence
PAUL W. SPENCE,
Assistant Federal Public Defender

s/ John H. Morris
JOHN H. MORRIS,
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 19th day of September, 1979, a copy of the aforegoing Motion to Dismiss or For Alternative Relief and Memorandum in support of said Motion was mailed to Edward M. Norton, Jr., Esquire, Assistant United States Attorney, 8th Floor, United States Courthouse, West Lombard Street, Baltimore, Maryland 21201.

/s/ Paul W. Spence
PAUL W. SPENCE,
Assistant Federal Public Defender
1012 Mercantile Bank &
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[DEFENDANT'S REQUEST FOR HEARING]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Criminal No. HM-79-0298

UNITED STATES OF AMERICA

v.

LEARLEY REED GOODWIN

REQUEST FOR HEARING

The defendant, Learley Reed Goodwin, by his attorneys, Charles G. Bernstein, Federal Public Defender for the District of Maryland, and Paul W. Spence, Assistant Federal Public Defender, pursuant to Rule 6 of the Local Rules of the United States District Court for the District of Maryland, respectfully requests this Honorable Court to grant a hearing on the defendant's Motion to Dismiss Count One, or for Alternative Relief.

Respectfully submitted,

/s/ Charles G. Bernstein
CHARLES G. BERNSTEIN,
Federal Public Defender

/s/ Paul W. Spence
PAUL W. SPENCE,
Assistant Federal Public Defender
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Trust Bldg.
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[NOVEMBER 7, 1979 PROCEEDINGS
BEFORE THE DISTRICT COURT
AND STIPULATIONS OF FACT]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Case No. HM-79-0298
Criminal Action

UNITED STATES OF AMERICA

v

LEARLEY REED GOODWIN

Baltimore, Maryland
November 7, 1979

The above-entitled case came on for Hearing on Paper No. 28, Motion of Defendant to Dismiss Count One of the Indictment before His Honor, Herbert F. Murray, at 4:00 p.m.

APPEARANCES

For the Government:

Edward M. Norton, Jr.

For the Defendant:

Paul W. Spence

Reported by: S. M.Lee Schap
Official Court Reporter

* * * *

[178] MR. SPENCE: In this regard, Your Honor, there has been an agreement between Mr. Norton and myself that there will be no testimony, that the legal arguments will rest upon motions filed and the affidavits filed and also several additional facts.

I believe at this point it might be appropriate to read into the record the facts we agreed upon to be considered in addition to the motion for severance, if that is all right with Your Honor.

THE COURT: Yes, I would like to know what they are.

MR. SPENCE: You Honor, Mr. Norton will briefly read into the record the facts we agreed upon and I will continue with my argument after that, if that is all right with Your Honor.

THE COURT: Yes.

[179] MR. SPENCE: Thank you.

MR. NORTON: Yes, Your Honor. As you will remember, we have agreed that on May 24th of this year, 1979, Mr. Goodwin was brought to the United States District Court in Hyattsville to stand trial on charges that are set forth in a complaint which was originally filed on February 3rd, 1976, and also on a charge of failure to appear on a complaint which was filed on April 29th, 1976. He refused to consent to trial by Magistrate and requested a trial by jury.

On that date, on May 24th, 1979, when he appeared in Hyattsville for trial there was present in Magistrate Burgess' Court, a Mrs. Blanche Bruce. Mrs. Bruce was on date and still is a trial attorney with the Anti-trust Division of the Department of Justice in Washington. She was in Magistrate Burgess' Court on what her papers say is a special detail for two weeks to the United States District Court in Maryland and she is charged with prosecuting petty offenses and misdemeanors for the Magistrate on the basis of complaints filed by law enforcement officers. If she had been called to testify at this hearing, she would state that on May 24th, 1979, although she does not specifically remember doing so, she is sure that she read the incident report filed by United States Park Police Officer Morrissette and that she talked with Officer Morrissette about the offense which had [180] occured more than three years earlier

on February 2nd, 1976. She would testify that she was aware of the underlying facts of that incident or the basic facts of that incident and specifically she would state that she knew that Officer Morrissette had stopped Mr. Goodwin for speeding. After Officer Morrissette stopped Mr. Goodwin, he fled the scene hitting Officer Morrissette with the car and she was also aware that he had failed to appear for trial in April of 1976.

Mrs. Bruce and Mr. Goodwin's attorney, on May 24th, of this year—an individual named Mr. Eugene Zoglio—and that is spelled Z-O-G-L-I-O—both would testify that Mr. Zoglio on that date, May 24th, 1979, approached Mrs. Bruce and asked if the Government would consider a plea. Mrs. Bruce responded in the affirmative. Mr. Zoglia and Mrs. Bruce had some discussions about a plea in which some of the petty offenses and misdemeanors would be dropped and Mr. Goodwin would plead guilty to others. Mr. Zoglio went to his client, Mr. Goodwin, and was told by Mr. Goodwin that he did not want to plea bargain. Mrs. Bruce and Mr. Zoglio would also testify that none of the parties in any way considered the fact that an indictment might or could be sought under 18 USC, Section 111, which is Count One in the indictment at issue here.

THE COURT: Implicit in what you have said, [181] I guess, is the fact that Mrs. Bruce was there to prosecute this particular case. Now, had it gone forward before the Magistrate—

MR. NORTON: I don't want to make it implicit. That is a fact. This is what she was there for. She was on this special detail from the Department of Justice and her purpose for being there is prosecute petty offenses and misdemeanors on the basis of complaints brought by law enforcement officer. That was her job on the day that Mr. Goodwin refused to consent to trial before a Magistrate and exercised his right to trial by jury.

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SUPREME COURT OF THE UNITED STATES

No. 80-2195

UNITED STATES, PETITIONER

v.

LEARLEY REED GOODWIN

ORDER ALLOWING CERTIORARI

Filed November 30, 1981

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

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